2003

State of Utah v. Paul Sorenson : Brief of Appellee

Utah Court of Appeals

IN UTAH COURT OF APPEALS

STATE OF UTAH,	:	
Plaintiff/Appellee	:	
v.	:	
PAUL SORENSON,	:	Case No. 20030496-CA
Defendant/Appellant.	:	

BRIEF OF APPELLEE

APPEAL FROM TWO CONVICTIONS FOR ATTEMPTED EXPLOITATION OF A CHILD, BOTH THIRD DEGREE FELONIES, IN VIOLATION OF UTAH CODE ANN. § 76-5a-3 (2003), IN THE FOURTH JUDICIAL DISTRICT COURT, UTAH COUNTY, UTAH, THE HONORABLE FRED D. HOWARD, PRESIDING

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ORAL ARGUMENT AND PUBLISHED OPINION NOT REQUESTED

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BRIEF OF APPELLEE

JURISDICTION AND NATURE OF PROCEEDINGS

This is an appeal from two convictions for attempted exploitation of a minor, both third degree felonies, in violation of UTAH CODE ANN. § 76-5a-3 (2003). This Court has jurisdiction under UTAH CODE ANN. § 78-2a-3(2)(e) (2002).

STATEMENT OF THE ISSUE AND STANDARD OF REVIEW

Is defendant entitled to reversal of his conditional guilty pleas where he fails to attack the trial court's primary ground for denying his motion to suppress the child pornography found on his computer?

Since defendant does not challenge the basis of the court's ruling below, no standard of review applies.

CONSTITUTIONAL PROVISIONS, STATUTES, AND RULES

This appeal does not depend on the interpretation of any constitutional provision, statute, or rule.

STATEMENT OF THE CASE

Defendant was charged by Amended Information dated 18 March 2003 with two counts of attempted exploitation of a minor, both third degree felonies, in violation of UTAH CODE ANN. § 76-5a-3 (2003). R197-196.[1]

Defendant's motion to suppress child pornography seized from his computer and disks was denied in two written rulings on 4 September 2002, *see* R139-135, and 20 April 2003, *see* R210-208.

Defendant entered a conditional guilty plea to both counts, reserving the right to challenge the trial court's ruling. R195-188. The trial court imposed the statutory term of 0-5 years for each count, which it then suspended and placed defendant a thirty-six month term of probation. R222-219. Defendant timely appealed. R224.

STATEMENT OF THE FACTS

The parties stipulated to the following facts, drafted by defense counsel:

> On April 18, 2001, officers went to the home of the defendant. Officers approached the defendant at his home. Officers advised [sic] asked to look at a computer at the defendant's home. The officers then look[ed] at the computer via a program call[ed] 'pre-search[.]' [T]he officers searched the computer locating what they believed to be 40 images of child pornography. They then terminated their search and seized the computer.
>
> The officers then applied for a search warrant by filing an affidavit in support of the warrant. *See* attachment. The affidavit was signed on 24, 2001. Based on said affidavit, Judge Eyre of the Fourth District Court signed the search warrant on April 24, 2001. *See* Search Warrant.

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[1]The record on appeal has been numbered in reverse chronological order.

> On May 7, 2001, the officers executed the search warrant. On said date, the Forensic Computer Lab received the computer and two floppy disks from the officer. A bit stream image backup was made of the original drive. The backup was then transferred to recordable CDs and marked as the original backup. The backup was used to create additional bit stream image copies that were used in the forensic examination. This same process was used on the floppy disks.

R68-67 (a copy the stipulation is contained in addendum A). The search warrant affidavit by Detective Atack of the Salt Lake City Police Department was attached to the stipulation and stated in pertinent part:

> In January of 2000, I received information from the Dallas Texas Police Department that [defendant] of 234 South 800 West, Orem UT 84058, had purchased access to a web site that distributed child pornography with one of his credit cards.
>
> On April 18, 2001, myself and other members of the Utah Internet Crimes Against Children Task Force contacted [defendant] at his residence. We identified ourselves to [defendant] and explained to him that we had received information that he had purchased access to child pornography on the Internet. I informed him that he was not under arrest. I asked [defendant] if we could look at his computer to see if he had any child pornography stored on it. [Defendant] said "sure, no problem" and led us to the computer. Using a program called "Pre-search" we conducted a consent search of [defendant's]. During the search I saw approximately 40 images of naked children that I believed to be under the age of 12 in various poses exposing their genitalia and engaged in sexual activity. After viewing these images I terminated the consent search of [defendant's] computer. During this consent search, [defendant] stated that the pictures we viewed on his computer "seem familiar to one's he's seen over the years." I seized the computer so that a full forensic examination of it could be performed.
>
> On the basis of the information contained in this affidavit, I believe there is probable cause to believe that [defendant] may be a collector of child pornography and that there will be additional evidence of this crime stored on his computer that was seized. Accordingly, it is requested that [the] following items be searched which are located at 257 East 200 South, Salt Lake City, UT 84111:

> A personal computer known as a Packard Bell Legend 2440, serial number N160095844+.
>
> Two floppy disks know[n] as Diane's 1.2 MB and Diane's 720 KB.

R63-62, add. A.

Defendant moved to suppress the child pornography found on his computer and disks, alleging that they were confiscated without his consent, exigent circumstances, or a warrant. R45-43 (a copy is attached in addendum B). The State responded that the search and seizure of defendant's computer and disks was justified by defendant's voluntary consent. R56-54 (a copy is contained in addendum C). The State further argued that seizure of the computer was additionally justified by probable cause and exigent circumstances, and that the continuation of the search at the forensic lab was additionally justified by the search warrant. R53-52, add. C.

Thereafter, defendant filed a second motion to suppress asserting that the search warrant was not timely executed under UTAH CODE ANN. § 77-23-205 (2003) ("The search warrant shall be served within ten days from the date of issuance. Any search warrant not executed within in this time shall be void and shall be returned to the court or magistrate as not executed"). R130-128, add. B.

The State reiterated that the search of defendant's computer and disks—both at his home and at the forensic lab—was justified by defendant's voluntary consent which had never been withdrawn. R147, add. C. Additionally, the State posited that because police possessed defendant's computer pursuant to his consent *before* they obtained the search

warrant it was not necessary to serve defendant with the warrant. R146, add. C. Rather, the search warrant was properly and essentially "served" on law enforcement the same day it was obtained (24 April 2001) because law enforcement, or the forensic lab, then possessed the computer. *Id.* (citing UTAH CODE ANN. § 77-23-206 (2003) ("When the officer seizes property pursuant to a search warrant, he shall give a receipt to the person from whom it was seized or in whose possession it was found. If no person is present, the officer shall leave the receipt in the place where he found the property. Failure to give or leave a receipt shall not render the evidence seized inadmissible at trial").

Even if the warrant was not deemed served until 7 May 2001, the date it was given to the forensic lab, the State argued that it was still timely served within the 10-day limit set forth in section 77-23-205(2). R145, add. C. Under rule 2, Utah Rules of Criminal Procedure, Saturdays, Sundays and legal holidays are excluded when computing time periods less than eleven days. *Id.* Thus, excluding weekends, the warrant was served nine days after it was issued and was therefore valid. *Id.*

Finally, the State argued that police acted in good faith in executing the search warrant and that the probable cause supporting the issuance of the warrant had not become stale. R145-144, add C. Indeed, the seized computer was kept in a "protected environment and was not going to change no matter how long it took for the search." R144, add. C. Accordingly, even if there was an arguable technical violation of section 77-23-205(2), defendant suffered no prejudice and suppression was unwarranted. *Id.*

The trial court denied defendant's motions to suppress in a written ruling filed on 4 September 2002:

> . . . The Court is persuaded by [the State's] pleading and authorities regarding consensual searches and that such a search is valid if the consent was freely and voluntarily given. After review of the parties' pleading and authorities the Court concludes that [d]efendant freely and voluntarily gave his permission for the officers to search his computer. Further, no evidence has been established of record to show that [d]efendant later withdrew his consent to render a continued search invalid. . . .
>
> The officers seized the computer on April 18, 2001, taking it into their custody but the warrant was not obtained by the officers until April 24, 2001. The warrant was essentially served on [April] 24, 2001 at the time the officers obtained the warrant because the property covered by the warrant was in their possession. Therefore, the warrant was served on April 24, 2001 and not executed until May 7, 2001 when the computer and disks were delivered to the forensic lab for search. After review of the statutory authorities the Court finds that there is no requirement in [section] 77-23-205 that requires the authorities who are executing the search upon the property to conduct such search within a specific time period. The Court concludes that the subsequent forensic search conducted upon the computer following it's seizure was a valid search authorized by warrant obtained on April 24, 2001.
>
> For the foregoing reasons, the Court respectfully denies [d]efendant's Motion to Suppress.

R139-136 (a complete copy of the ruling is attached in addendum D).

Defendant filed a written Objection to Finding of Fact Referencing Search by Consent on 17 March 2003, which stated:

> Defendant objects to any findings suggesting the State had the defendant's consent to search his computer or property. The facts in support of the motion to suppress were contained within the "Stipulated Facts referencing Motion to Suppress."
>
> No facts were presented to the Court regarding the issue of consent.

R182 (a copy is attached in addendum E). Defendant asserted that "all the facts relevant to the [m]otion to [s]uppress were contained in the parties' stipulation and the search warrant affidavit which he attached to his objection. *See* R182, 180-174, add. E. Defendant also filed a Motion to Strike Court Findings Not Substantiated by Stipulation re: Facts on 2 April 2003. R199-198 (a copy is attached as addendum F). Defendant argued that the trial court's ruling "went beyond the facts represented in the stipulation," and that the "only factual basis for the Court's ruling (re: motion to suppress) would be within the parties' stipulation. No other hearings were conducted regarding the motion to suppress and no other evidence exists." *Id.* The State responded that the trial court's voluntary consent ruling was supported by the express language of the parties' stipulation which had been drafted by defense counsel. R202-201. The State also pointed out that there was no indication in the parties' stipulation that police claimed authority to search defendant's computer or disks, exhibited force, used deception or trickery, or that defendant objected or otherwise refused to cooperate. R205-204 (citing *State v Bisner*, 2001 UT 99, ¶ 47, 37 P.3d 1073).

The trial court denied defendant's motion to strike in a written ruling filed on 29 April 2003. R210-208 (a copy is attached in addendum F). The trial court found that the parties' stipulation,

> as drafted by [d]efendant's counsel, . . 'incorporated' the facts also contained within the attachments as well[,] i.e., the Search Warrant and the Affidavit for the Search Warrant, as opposed to mere reference to the fact that a search warrant was issued which required no such document

reference or incorporation. Notably, the Affidavit for Search Warrant contains the following language:

> On April 18, 2001, myself (Det. Atack and other members of the Utah Internet Crimes Against Children Task Force contacted [defendant] at his residence. We identified ourselves to [defendant] and explained to him that we had received information that he had purchased access to child pornography on the Internet. I informed him that he was not under arrest. **I asked [defendant] if we could look at his computer to see if he had any child pornography stored on it. [Defendant] said 'sure, no problem' and led us to the computer.** Using a program called 'Pre-search' we conducted a consent search of [defendant's] computer. During the search I saw approximately 40 images of naked children that I believed to be under the age of 12 in various poses exposing their genitalia and engaged in sexual activity. After viewing these images I terminated the consent search of [defendant's] computer. During this consent search, [defendant] stated that the pictures we viewed on his computer 'seemed familiar to ones he's seen over the years.' I seized the computer so that a full forensic examination of it could be performed.

These are the facts known and claimed by the parties at the time the stipulation was made relative to the [m]otion to [s]uppress. It is the Court's opinion as set forth in its previous [r]uling that notwithstanding [d]efendant's assertions to the contrary, such factual occurrence and the circumstances of this case support the conclusion that the search was a consensual search. For these reasons and by reason of the authorities and arguments set forth in [the State's] memoranda, [d]efendant's [m]otion is respectfully denied.

R209-208, add. F (emphasis added).

SUMMARY OF THE ARGUMENT

The trial court ruled that the search of defendant's computer and disks for child pornography—both at his home and at the forensic lab—was based on defendant's

voluntary consent. The trial court also found that the seizure of defendant's computer was additionally justified by probable cause and exigent circumstances, and that the continuation of the search at the forensic lab was additionally justified by the properly served search warrant. On appeal, defendant does not address the trial court's consent ruling. Instead, defendant argues that the search warrant was not timely served within ten days from the date of its issuance under UTAH CODE ANN. § 77-23-305(2) (2003). Because defendant does not attack the primary basis of the trial court's ruling, his claim fails.

ARGUMENT

DEFENDANT IS NOT ENTITLED TO A REVERSAL OF HIS CONDITIONAL GUILTY PLEAS WHERE HE FAILS TO ATTACK THE PRIMARY GROUND FOR DENYING HIS MOTION TO SUPPRESS THE CHILD PORNOGRAPHY FOUND ON HIS COMPUTER

Defendant claims that the child pornography found on his computer and disks should have been suppressed because the search warrant was allegedly not served within 10 days after it was issued, as required by UTAH CODE ANN. § 77-23-205(2) (2003). Aplt. Br. at 6-8. Defendant's argument overlooks that the trial court denied his motion to suppress only after finding that the search and seizure of his computer and disks was justified under the consent exception to the warrant requirement. *See* R139-135, add. D; R210-208, add. F. Thus, the search warrant here provided no more than an alternative ground for the trial court's ruling. Because defendant fails to attack the primary basis for the trial court's ruling, his claim necessarily fails.

This is a consent search case. The trial court ruled that the search of defendant's computer and disks for child pornography—including the initial search at defendant's home and the continuation thereof at the forensic lab—was based on defendant's voluntary consent. *See* R139-136, add. D; R210-208, add. F. Alternatively, the trial court found that the seizure of defendant's computer and disks was *additionally* justified by probable cause and exigent circumstances, and that the continuation of the search at the forensic lab was *additionally* justified by the subsequently obtained search warrant. *Id.*

Defendant does not attack the trial court's consent ruling. His brief does not quote the trial court's ruling, mention the consent exception to the warrant requirement, or acknowledge that the trial court upheld the search and seizure of his computer and disks in reliance upon the consent exception to the warrant requirement. *See* Aplt. Br. at 6-8. Rather, defendant merely argues that a subsequently obtained search warrant for a further search of the seized computer at the forensic lab was not executed within the "statutorily mandated ten (10) days," and was therefore void. Aplt. Br. at 7.

Rule 24(a)(9), Utah Rules of Appellate Procedure, requires that the argument portion of appellant's brief "shall contain the contentions and reasons of the appellant with respect to the issues presented, including the grounds for reviewing any issue not preserved in the trial court, with citations to the authorities, statutes, and parts of the record relied on."

As Utah courts have frequently reiterated, "a reviewing court is entitled to have the issues clearly defined with pertinent authority cited and is not simply a depository in

which the appealing party may dump the burden of argument and research." *State v. Gomez*, 2002 UT 120, ¶ 20, 63 P.3d 72 (quoting *State v. Bishop*, 753 P.2d 439, 450 (Utah 1988) (in turn quoting *Williamson v. Opsahl*, 416 N.E.2d 783, 784 (Ill. App. 1981))). Thus, when the appellant fails to present any relevant authority, the reviewing court will "decline to find it for him." *State v. Pritchett*, 2003 UT 24, ¶ 12, 69 P.3d 1278 (rejecting prosecutorial misconduct challenge). Similarly, "[w]hen a party fails to offer any meaningful analysis, [the court will] decline to reach the merits." *State v. Garner*, 2002 UT App 234, ¶ 12, 52 P.3d 467. An appellant must, in addition to citing cases, "explain why . . . the cited cases compel this court to reverse the district court . . ." *Id.*

"Utah courts routinely decline to consider inadequately brief arguments." *State v. Bryant*, 965 P.2d 539, 549 (Utah App. 1998) (citing *State v. Wareham*, 772 P.2d 960, 966 (Utah 1989); *State v. Amicone*, 689 P.2d 1341, 1344 (Utah 1984); *State v. Yates*, 834 P.2d 599, 602 (Utah App. 1992); *State v. Price*, 827 P.2d 247, 249 (Utah App. 1992)). *See also State v. Norris*, 2001 UT 104, ¶ 28, 48 P.3d 872, *cert. denied,* 535 U.S. 1062 (2002); *State v. Sloan*, 2003 UT App 170, ¶ 13, 72 P.3d 138.

Because defendant fails to attack the basis for the trial court's consent ruling here, his challenge is inadequately briefed. Although his brief contains one legal authority, it does not explain why the single cited case compels this Court to reverse the trial court's consent ruling. Indeed, it does not address or even mention this ground for the trial court's ruling. Accordingly, this Court should decline to address defendant's challenge.

* * *

Even if the Court were to address defendant's inadequately briefed claim, he cannot prevail. Assuming the warrant was technically invalid under section 77-23-205(2), the warrant only went to the continuation of the search at the forensic lab. *See* R65-62, add. A. Defendant fails to argue, let alone to demonstrate that the arguably, technically invalid warrant for the forensic lab search compels suppression of the 40 child pornography images earlier observed by police on defendant's computer at his home pursuant to his voluntary consent. *Id. See State v. Genovesi*, 909 P.2d 916, 922-924 (Utah App. 1995) (finding admission of illegally seized evidence harmless beyond a reasonable doubt where evidence was cumulative of properly admitted evidence). Further, a technical statutory violation does not necessarily warrant suppression, particularly where as here, defendant makes no claim that the alleged statutory violation amounted to a constitutional deprivation or rendered probable cause to search stale. *See State v. Ribe*, 876 P.2d 403, 406 (Utah App. 1994) (recognizing that suppression of evidence "is an appropriate remedy for illegal police conduct only when that conduct implicates a fundamental violation of a defendant's rights"). *See also State v. Miller*, 429 N.W.2d 26, 34-35 (S.D. 1988) (holding that South Dakota's "ten-day rule is not a matter of constitutional dimensions, as neither the Fourth Amendment nor [the state constitution] contain such a limit," and refusing to suppress even though the ten-day rule was broken absent a showing of staleness).

CONCLUSION

Defendant's third-degree felony convictions for attempted sexual exploitation of a minor should be affirmed.

RESPECTFULLY submitted on 17 February 2004.

MARK L. SHURTLEFF
Utah Attorney General

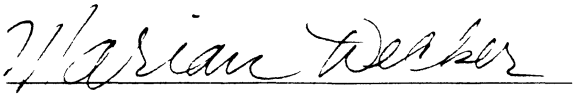
MARIAN DECKER
Assistant Attorney General

MAILING CERTIFICATE

I certify that on 17 February 2004, a copy of the foregoing BRIEF OF APPELLEE was mailed, postage prepaid, to the following:

SHELDEN R. CARTER
3325 North University, Suite 200
Provo, Utah 84604

Attorney for Defendant



ADDENDA

Addendum A

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HARRIS & CARTER
Attorney for Defendant
3325 N. University Ave., Ste. 200
Jamestown Square, Clocktower Bldg.
Provo, Utah 84604

Telephone: 375-9801

IN THE FOURTH JUDICIAL DISTRICT COURT FOR UTAH
UTAH COUNTY
--oooOooo--

STATE OF UTAH,	)	
	)	**Stipulated Facts Referencing**
	)	**Motion to Suppress**
vs.	)	
	)	
	)	
PAUL SORENSON,	)	
	)	Crim. No. **011403460**
Defendant.	)	

--oooOooo--

On April 18, 2001, officers went to the home of the defendant. Officers approached the defendant at his home. Officers advised asked to look at a computer at the defendant's home. The officers then look at the computer via a program call 'pre-search' the officers searched the computer locating what they believed to be 40 images of child pornography. They then terminated their search and seized the computer.

The officers then applied for a search warrant by filing an affidavit in support of the warrant See attachment The affidavit was signed on April 24, 2001 Based on said affidavit, Judge Evre of the Fourth District Court signed the search warrant on April 24, 2001 See Search Warrant

On May 7, 2001, the officers executed the search warrant On said date, the Forensic Computer Lab received the computer and two floppy disks from the officer A bit stream image backup was made of the original hard drive The backup was then transferred to recordable CDs and marked as the original backup The backup was used to create additional bit stream image copies that were used in the forensic examination This same process was used on the floppy disks

Dated this 27 day of August, 2002

Paula Houston
For the Attorney General for the State of Utah

Dated this 28 day of August, 2002

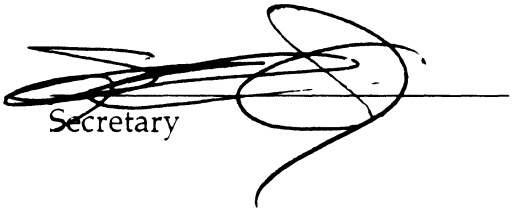
Sheldon Carter
Attorney for the Defendant Sorenson

MAILING CERTIFICATE

I HEREBY CERTIFY that I personally faxed a true and correct copy of the foregoing on this 28 day of August, 2002, by first-class, U.S. Mail, postage prepaid to the following:

Hand delivered this day to the Attorney General

Fourth Judicial District Court
District Court
Provo, Utah



Secretary

IN THE FOURTH DISTRICT COURT

UTAH COUNTY, STATE OF UTAH

SEARCH WARRANT

No. _____

To any peace officer in the State of Utah:

Proof by Affidavit under oath having been made this day before me by Detective Ryan Atack, I am satisfied that there is probable cause to believe that on the premises known as:

Internet Crimes Against Children Task Force Office, 257 East 200 South, Salt Lake City, UT, 84111.

In the City of Salt Lake, County of Salt Lake, State of Utah, there is now certain property or evidence described as:

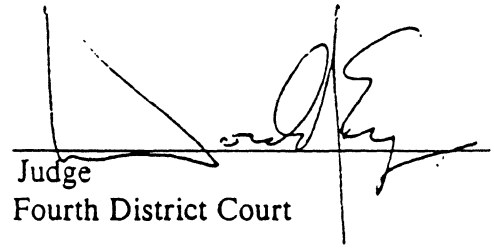
> **A personal computer**, known as a Packard Bell Legend 2440, serial number N160095844+.
>
> **Two floppy disks,** known as Diane's 1.2MB and Diane's 720KB.

And that said property, which was seized by the Internet Crimes Against Children Task Force, was unlawfully acquired or is unlawfully possessed; or has been used to commit or conceal a public offense; or is being possessed with the purpose to use it as a means of committing or concealing a public offense and consists of an item or constitutes evidence of illegal conduct possessed by a party to the illegal conduct.

You are therefore commanded in the daytime, to make a search of the above described items for the herein-above described property or evidence and if you find the same or

any part thereof, to bring it before me at the Fourth District Court, County of Utah, State of Utah, or retain such property in your custody, subject to the order of this court.

GIVEN UNDER MY HAND and dated this 24th day of April, 2001.



Judge
Fourth District Court

IN THE FOURTH DISTRICT COURT

UTAH COUNTY, STATE OF UTAH

STATE OF UTAH)

COUNTY OF UTAH)

AFFIDAVIT FOR SEARCH WARRANT

I, Detective Ryan Atack, under oath state

1 I am a Detective with the Salt Lake City police department I have been a police officer for 9 years and am currently assigned to the Utah Internet Crimes Against Children Task Force My current assignment is that of investigating the sexual exploitation of children by means of the Internet I have attended the Fox Valley Technical College protecting children on-line course I have also attended the Western States Vice Conference, the National Consortium for Justice Information and Statistics On-line Investigation course, and the Federal Bureau of Investigation Innocent Images course I have investigated several cases involving the sexual exploitation of children over the Internet

2 This affidavit is made in support of an application for a warrant to search a computer which I have seized from Paul Sorensen The computer is a Packard Bell Legend 2440, serial number N160095844+ I seized the computer on April 18, 2001 and it is being stored at the Utan Internet Crimes against Children Task Force Office located at 257 East 200 South, Salt Lake City, Utah 84111 This affidavit has been reviewed by Jason P Perry, Assistant Utah Attorney General

3 In January of 2000, I received information from the Dallas Texas Police Department that Paul Sorensen of 234 South 800 West Orem, UT 84058, had purchased access to a web site that distributed child pornography with one of his credit cards

4 On April 18, 2001, myself and other members of the Utah Internet Crimes Against Children Task Force contacted Paul Sorensen at his residence We identified ourselves to Mr Sorensen and explained to him that we had received information that he had purchased access to child pornography on the Internet I informed him that he was not under arrest I asked Mr Sorensen if we could look at his computer to see if he had any child

pornography stored on it. Mr. Sorensen said "sure, no problem" and led us to the computer. Using a program called "Pre-search" we conducted a consent search of Mr. Sorensen's computer. During the search I saw approximately 40 images of naked children that I believed to be under the age of 12 in various poses exposing their genitalia and engaged in sexual activity. After viewing these images I terminated the consent search of Mr. Sorensen's computer. During this consent search, Mr. Sorensen stated that the pictures we viewed on his computer " seem familiar to ones he's seen over the years". I seized the computer so that a full forensic examination of it could be preformed.

6. On the basis of the information contained in this affidavit, I believe there is probable cause to believe that Paul Sorensen may be a collector of child pornography and that there will be additional evidence of this crime stored on his computer that was seized. Accordingly, it is requested that following items be searched which are located at 257 East 200 South, Salt Lake City, UT 84111:

A personal computer known as a Packard Bell Legend 2440, serial number N160095844+.

Two Floppy disks know as Diane's 1.2 MB and Diane's 720 KB

Detective Ryan Atack
Utah Internet Crimes Against Children Task Force

Subscribed and sworn to before me this 24th day of April, 2001.

Judge
Fourth District Court

Addendum B

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IN THE FOURTH JUDICAL DISTRICT COURT
STATE OF UTAH, UTAH COUNTY
---ooOoo---

STATE OF UTAH.	**MOTION TO SUPPRESS &** MEMORANDUM: PROBABLE CAUSE RE: SEARCH WARRANT
Plaintiff,	
vs.	
	DIVISION# 3
	CASE NO. 011403460
PAUL HARVEY SORENSEN,	
Defendant.	

---ooOoo---

Defendant herein seeks this Court to suppress evidence. Defendant asserts that officers herein took, confiscated and search his property. The defendant asserts that such was done without warrant and without consent to search the data contained within said computer. The defendant asserts that the officers did so without a warrant when a warrant was necessitated.

The defendant asserts that such conduct is a violation of the rights guaranteed to him under Art. I Section 14 of the Utah State Constitution and the Fourth Amendment to the United States Constitution.

FACTS

The defendant is accused of violating the provisions of section 76-5a-3. The basis of the accusation is that the defendant had on a computer images of child pornography. At the preliminary hearing heard on May 30, 2002, the officer advised that they went to the defendant's home on April 18, 2001 and entered the home. The officer advised that they conducted a search of a computer in the defendant's home. After viewing the data on the computer, the officers then seized the computer. The officers then advised that they took the computer from the home and search the contents within said computer. The officer advised that such was done without warrant.

Memorandum

Presumptions and Burden of Proof. This search is presumptively unreasonable since no search warrant authorized a search. State v. Brown, 853 P.2d 851, 855 (Utah 1992) (citing Katz v. United States, 389 U.S. 347, 357, 88 S. Ct. 507, 514, 19 L. Ed. 2d 576 (1967)). The State must demonstrate "that the circumstances of the seizure constitute an exception to the warrant requirement" to avoid exclusion of the evidence from trial. State v. Strickling, 844 P.2d 979, 985 (Utah App. 1992); See also State v. Christensen, 676 P.2d 408, 411 (Utah 1984) ("Since the officers had no warrant, it was the burden of the State to show that the search was lawful.").

Exigent Circumstances:

Exigent circumstances exist "only when the inevitable delay incident to obtaining a warrant must give way to an urgent need for immediate action." United States v. Satterfield, 743 F.2d 827, 844 (11th Cir. 1984). Utah courts have identified several

exigent circumstances that may justify a warrantless search, including the immediate need to prevent harm to the officers, destruction of evidence, or escape of the suspect. State v. Ashe, 745 P.2d 1255, 1258 (Utah 1987); City of Orem v. Henrie, 868 P.2d 1384, 1388 (Utah App. 1994); State v. Belgard, 840 P.2d 816, 823 (Utah App. 1992); State v. Palmer, 803 P.2d 1249, 1252 (Utah App. 1990), cert. denied, 815 P.2d 241 (Utah 1991). "The determination of exigency is based on the totality of the circumstances." Henrie, 868 P.2d at 1388.

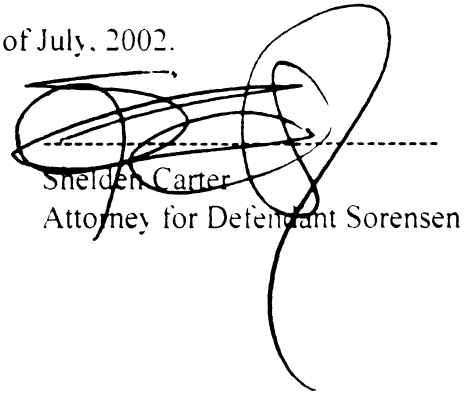
Defendant asserts that the officers lack any need warranting immediate action. More than adequate time existed for the officers to obtain a search warrant. They simply needed to make application and obtain the Court's approval prior to searching the interior of the computer. Defendant asserts that no exigent circumstances existed justifying such an immediate search of the contents of the computer.

CONCLUSION

The officer herein conducted a search of the computer without judicial authorization. The only justification for such a search would be exigent circumstance and none existed here.

This evidence must be suppressed.

Dated this 18th day of July, 2002.



Shelden Carter
Attorney for Defendant Sorensen

MAILING CERTIFICATE

I hereby certify that I hand delivered a copy of the foregoing to:

ATTORNEY GENERAL FOR THE STATE OF UTAH
236 State Capitol
SALT LAKE CITY, UTAH 84111

Postage prepaid this 19 day of July 2002.

Wendy Clark
Secretary

SHELDEN R CARTER (0589)
HARRIS & CARTER
Attorney for Defendant
3325 N. University Ave., Ste. 200
Jamestown Square, Clocktower Bldg.
Provo, Utah 84604

Telephone: 375-9801

IN THE FOURTH JUDICIAL DISTRICT COURT FOR UTAH
UTAH COUNTY
--oooOooo--

STATE OF UTAH,	)	
	)	**2nd Memorandum in Support of**
	)	**Motion to Suppress**
vs.	)	
	)	
	)	
PAUL SORENSON,	)	
	)	Crim. No. **011403460**
Defendant.	)	

--oooOooo--

On April 18, 2001, officers went to the home of the defendant. Officers approached the defendant at his home. Officers advised asked to look at a computer at the defendant's home. The officers then look at the computer via a program call 'pre-search' the officers searched the computer locating what they believed to be 40 images of child pornography. They then terminated their search and seized the computer.

The officers then applied for a search warrant by filing an affidavit in support of the warrant. See attachment. The affidavit was signed on April 24, 2001. Based on said affidavit, Judge Eyre of the Fourth District Court signed the search warrant on April 24, 2001. See Search Warrant.

On May 7, 2001, the officers executed the search warrant. On said date, the Forensic Computer Lab received the computer and two floppy disks from the officer. A bit stream image backup was made of the original hard drive. The backup was then transferred to recordable CDs and marked as the original backup. The backup was used to create additional bit stream image copies that were used in the forensic examination. This same process was used on the floppy disks.

Memorandum

The State law dealing with the issuance of search warrants is set out by the provisions of Title 77 Chapter 23. The time for service of such warrants is limited by statute to ten days after issuance. The provisions provides as follows:

77-23-205. Time for service -- Officer may request assistance.

(1) The magistrate shall insert a direction in the warrant that it be served in the daytime, unless the affidavits or oral testimony state a reasonable cause to believe a search is necessary in the night to seize the property prior to it being concealed, destroyed, damaged, altered, or for other good reason; in which case he may insert a direction that it be served any time of the day or night. An officer may request other persons to assist him in conducting the search.

(2) **The search warrant shall be served within ten days from the date of issuance. Any search warrant not executed within this time shall be void and shall be returned to the court or magistrate as not executed**.

Defendant argues that the Court signed the warrant on April 24, 2001. Not counting the 24th, the warrant should have been executed by May 4, 2001. The officers executed the search warrant on May 7, 2001.

By law, the warrant was void after May 4. The warrant was stale and void by statutory definition. Statutorily the warrant was to be returned to the Court or magistrate and not executed. The officers herein failed to comply with the mandated period of the statute.

Defendant's motion to suppress should be granted.

Dated this ___ day of August, 2002.

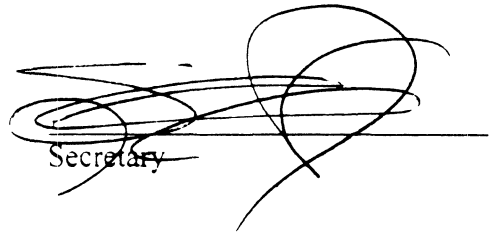
Shelden Carter
Attorney for the Defendant Sorenson

MAILING CERTIFICATE

I hereby certify that I faxed a copy of the foregoing Motion and Objection.

Attorney General on the

On this 30 th day of August, 2002.



Secretary

Addendum C

AUG 15

CRAIG L. BARLOW, 0213
PAULA J. HOUSTON, 5239
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Attorney General
236 State Capitol
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Telephone: (801) 538-1941

Attorneys for Plaintiff

IN THE FOURTH DISTRICT COURT

UTAH COUNTY, STATE OF UTAH

STATE OF UTAH,	:	**MEMORANDUM IN RESPONSE TO DEFENDANT'S MOTION TO SUPPRESS**
Plaintiff,	:	
vs.	:	
PAUL HARVEY SORENSEN,	:	Case No. 011403460 FS
	:	Judge Stott
Defendant.		

The State through its counsel, Paula J. Houston, Assistant Attorney General, submits this Memorandum in Response to Defendant's Motion to Suppress. Defendant's motion should be denied because the defendant's home computer was searched only after the defendant consented to the search. After the computer was seized, a forensic search of the computer was done pursuant to a search warrant. Therefore, these actions did not violate the Fourth Amendment of

the United States Constitution, nor Article I, Section 14 of the Utah Constitution.

STATEMENT OF FACTS

On April 18, 2001, Detective Atack, an officer with the Salt Lake City Police Department assigned to the Internet Crimes Against Children Task Force (ICAC), with several other members of ICAC, contacted the defendant at his home. Detective Atack explained to the defendant that he had received information that the defendant had purchased access to child pornography on the Internet. He asked the defendant if they could look at his computer to see if he had any child pornography on it. The defendant gave Detective Atack consent to search his computer, and led them to the room where his computer was located. A consent search was conducted on the defendant's computer. During this search, Detective Atack observed several images of nude children engaged in sexual acts. The defendant was present during the search and commented on the pictures. After finding the images, Detective Atack ended the consent search and seized the computer for a full forensic examination. No additional search was made of the computer until a search warrant, signed by Judge Donald Eyre, was obtained on April 24, 2001, authorizing the complete search of the computer and two floppy disks. The forensic examination revealed many image files of children engaged in sexual conduct.

I. THE INITIAL SEARCH WAS VALID BECAUSE CONSENT WAS VOLUNTARILY GIVEN

Searches which are authorized by consent are "wholly valid". Katz v. United States, 389 U.S. 347 (1967). This principle has been upheld repeatedly since Schneckloth v. Bustamonte, 412 U.S. 218, 219 (1973) where the United States Supreme Court stated that it is "well settled that one of the specifically established exceptions to the requirements of both a warrant and probable cause is a search that is conducted pursuant to consent." (*See* also Davis v. United States, 328 U.S. 582, 593-594, Vale v. Louisiana, 26 L.Ed.2d 409, Katz at 389). In order for a consent search to be valid, the consent must be freely and voluntarily given. *See* Bumber v. North Carolina, 391 U.S. 543, 548 (1968). This is a question of fact, and it must be determined from the totality of the circumstances. *See* Schneckloth at 227.

In this case, Agent Rose testified at the preliminary hearing that he went to the defendant's home with other ICAC members. The defendant opened the door. They explained that in January 2000, ICAC received information from the Dallas Texas Police Department that the defendant had used his credit card to purchase access to a web site that distributed child pornography. They asked the defendant if they could look at his computer and described the search program they would use on his computer. The defendant freely and voluntarily consented to the officers entering his home and searching his computer. He took them to the computer, which was located in his bedroom, and watched as the officers searched his computer. The defendant did not with draw his consent at any time during this search. Based on the consent doctrine, this search did not violate the Fourth Amendment of the United States Constitution, nor

Article I, Section 14 of the Utah Constitution.

II. SEIZURE OF THE COMPUTER WAS VALID BECAUSE OF PLAIN VIEW AND EXIGENT CIRCUMSTANCES

The United States Supreme Court has ruled that "while lawfully engaged in an activity in a particular place, police officers perceive a suspicious object, they may seize it immediately." Texas v. Brown, 460 U.S. 730, 739 (1983). They also stated that "[w]hat a person knowingly exposes to the public, even in his own home or office, is not a subject of Fourth Amendment protection." *See* Katz at 351. If an individual is invited into a home and does not exceed the scope of the invitation, he may seize anything in plain view. State v. McArthur, 996 P.2d 555, 562 (Utah App. 2000).

During the consent search in this case, numerous images of nude children engaged in sexual acts were found on the defendant's computer. The defendant was not under arrest nor was he being removed from the home. The officers were in a place they had a legal right to be, based on the consent of the defendant, conducting a search they had a legal right to conduct. Upon seeing the images of nude children engaged in sexual acts, the officers had probable cause to believe those pictures where illegal. They seized the computer as evidence in plain view and based on exigent circumstances. Because computer images are easily destroyed and because it is easy to move a personal computer, it was reasonable for the officers to believe the defendant would destroy or hide the evidence if they did not seize the computer immediately. City of Orem

v. Henrie, 868 P.2d 1384 (Utah App. 1994); State v. Belgard, 840 P.2d 819 (Utah App. 1992); State v. Palmer, 803 P.2d 1249 (Utah App. 1990), cert. denied, 815 P.2d 241 (Utah 1991). The seizure of the computer did not violate the Fourth Amendment of the United States Constitution, nor Article I, Section 14 of the Utah Constitution.

III. THE FORENSIC SEARCH WAS VALID BECAUSE IT WAS PURSUANT TO A SEARCH WARRANT

Once the computer was seized, a search warrant was obtained before any additional searches were conducted on the computer. The warrant was signed by Judge Donald Eyre on April 24, 2001, authorizing the complete search of the computer and two floppy disks which were seized from the defendant. A copy of the search warrant was sent to the defense as part of discovery. (*See*, Search Warrant, bate stamp 00000002-0000000.)

CONCLUSION

As the court noted in Schneckloth "in some situations where the police have some evidence of illicit activity, but lack probable cause to arrest or search, a search authorized by a valid consent may be the only means of obtaining important and reliable evidence." (Schneckloth at 288). Such is the case at hand, ICAC received information that the defendant's credit card was used to purchased access to an Internet website that distributed child pornography and went to the defendant's home to investigate that information. In the process, the defendant

consented to let the officers search his computer for such material. The defendant's consent was voluntary and the evidence that was obtained from that consent should be admitted at trial. The subsequent forensic search was conducted under a duly authorized search warrant and all evidence obtained as a result of that search should also be admitted at trial.

DATED this 16th day of August, 2002.

MARK SHURTLEFF
Attorney General

Paula J. Houston
Assistant Attorney General

Certificate of Service

I hereby certify that on this 16th day of August, 2002, I mailed a true and correct copy of the above Memorandum in Response to Defendant's Motion to Suppress, postage pre-paid, to Shelden Carter at 3325 North University, Suite 200, Provo, Utah 84604-4438.

IN THE FOURTH DISTRICT COURT

UTAH COUNTY, STATE OF UTAH

SEARCH WARRANT

No. _____

To any peace officer in the State of Utah:

Proof by Affidavit under oath having been made this day before me by Detective Ryan Atack, I am satisfied that there is probable cause to believe that on the premises known as:

Internet Crimes Against Children Task Force Office, 257 East 200 South, Salt Lake City, UT, 84111.

In the City of Salt Lake, County of Salt Lake, State of Utah, there is now certain property or evidence described as:

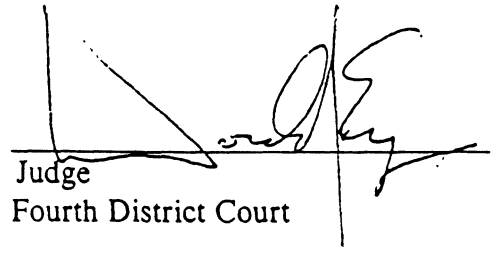
> **A personal computer**, known as a Packard Bell Legend 2440, serial number N160095844+.
>
> **Two floppy disks,** known as Diane's 1.2MB and Diane's 720KB.

And that said property, which was seized by the Internet Crimes Against Children Task Force, was unlawfully acquired or is unlawfully possessed; or has been used to commit or conceal a public offense; or is being possessed with the purpose to use it as a means of committing or concealing a public offense and consists of an item or constitutes evidence of illegal conduct possessed by a party to the illegal conduct.

You are therefore commanded in the daytime, to make a search of the above described items for the herein-above described property or evidence and if you find the same or

any part thereof, to bring it before me at the Fourth District Court, County of Utah, State of Utah, or retain such property in your custody, subject to the order of this court.

GIVEN UNDER MY HAND and dated this 24th day of April, 2001.



Judge
Fourth District Court

IN THE FOURTH DISTRICT COURT

UTAH COUNTY, STATE OF UTAH

STATE OF UTAH)
:
COUNTY OF UTAH)

AFFIDAVIT FOR SEARCH WARRANT

I, Detective Ryan Atack, under oath state:

1. I am a Detective with the Salt Lake City police department. I have been a police officer for 9 years and am currently assigned to the Utah Internet Crimes Against Children Task Force. My current assignment is that of investigating the sexual exploitation of children by means of the Internet. I have attended the Fox Valley Technical College protecting children on-line course. I have also attended the Western States Vice Conference, the National Consortium for Justice Information and Statistics On-line Investigation course, and the Federal Bureau of Investigation Innocent Images course. I have investigated several cases involving the sexual exploitation of children over the Internet.

2. This affidavit is made in support of an application for a warrant to search a computer which I have seized from Paul Sorensen. The computer is a Packard Bell Legend 2440, serial number N160095844+. I seized the computer on April 18, 2001 and it is being stored at the Utah Internet Crimes against Children Task Force Office located at 257 East 200 South, Salt Lake City, Utah 84111. This affidavit has been reviewed by Jason P. Perry, Assistant Utah Attorney General.

3. In January of 2000, I received information from the Dallas Texas Police Department that Paul Sorensen of 234 South 800 West, Orem, UT 84058, had purchased access to a web site that distributed child pornography with one of his credit cards.

4. On April 18, 2001, myself and other members of the Utah Internet Crimes Against Children Task Force contacted Paul Sorensen at his residence. We identified ourselves to Mr. Sorensen and explained to him that we had received information that he had purchased access to child pornography on the Internet. I informed him that he was not under arrest. I asked Mr. Sorensen if we could look at his computer to see if he had any child

pornography stored on it. Mr. Sorensen said "sure, no problem" and led us to the computer. Using a program called "Pre-search" we conducted a consent search of Mr. Sorensen's computer. During the search I saw approximately 40 images of naked children that I believed to be under the age of 12 in various poses exposing their genitalia and engaged in sexual activity. After viewing these images I terminated the consent search of Mr. Sorensen's computer. During this consent search, Mr. Sorensen stated that the pictures we viewed on his computer " seem familiar to ones he's seen over the years". I seized the computer so that a full forensic examination of it could be preformed.

6. On the basis of the information contained in this affidavit, I believe there is probable cause to believe that Paul Sorensen may be a collector of child pornography and that there will be additional evidence of this crime stored on his computer that was seized. Accordingly, it is requested that following items be searched which are located at 257 East 200 South, Salt Lake City, UT 84111:

A personal computer known as a Packard Bell Legend 2440, serial number N160095844+.

Two Floppy disks know as Diane's 1.2 MB and Diane's 720 KB

Detective Ryan Atack
Utah Internet Crimes Against Children Task Force

Subscribed and sworn to before me this 24th day of April, 2001.

Judge
Fourth District Court

CRAIG L. BARLOW, 0213
PAULA J. HOUSTON, 5239
JASON P. PERRY, 8663
Assistant Attorneys General
MARK SHURTLEFF, 4666
Attorney General
236 State Capitol
Salt Lake City, Utah 84114
Telephone: (801) 538-1941

Attorneys for Plaintiff

IN THE FOURTH DISTRICT COURT

UTAH COUNTY, STATE OF UTAH

STATE OF UTAH,	:	**MEMORANDUM IN RESPONSE TO DEFENDANT'S 2nd MOTION TO SUPPRESS**
Plaintiff,	:	
vs.	:	
PAUL HARVEY SORENSEN,	:	Case No. 011403460 FS
	:	Judge Fred D. Howard
Defendant.		

The State through its attorney, Paula J. Houston, Assistant Attorney General, submits this Memorandum in Response to Defendant's 2nd Motion to Suppress. Defendant's motion should be denied because the search warrant was "served" immediately upon receipt even though the lab did not receive the computer until nine days after the issuance of the search warrant pursuant to the procedures for computing time as outlined in Rule 2 of the Criminal Rules of Procedure.

STATEMENT OF FACTS

On April 18, 2001, Detective Atack, an officer with the Salt Lake City Police Department assigned to the Internet Crimes Against Children Task Force (ICAC), with several other members of ICAC, contacted the defendant at his home, entered the home with consent of the defendant, searched his computer, and then seized it when sexually explicit images of children were found on the computer. At no time did the defendant withdraw his consent. Detective Atack obtained a search warrant on April 24, 2001 which authorized a search of the computer and two disks. The computer and the disks were transported to the lab May 7, 2001, thirteen calendar days after the warrant was issued. Four of those days were weekend days.

I. CONSENT

At stated in the first memorandum, searches which are authorized by consent are "wholly valid." Katz v. United States, 389 U.S. 347 (1967) This principle has been upheld repeatedly since Schneckloth v Bustamonte, 412 U.S. 218, 219 (1973) where the United States Supreme Court stated that it is "well settled that one of the specifically established exceptions to the requirements of both a warrant and probable cause is a search that is conducted pursuant to consent." A consent search must be freely and voluntarily given. *See* Bumber v. North Carolina, 391 U.S. 543, 548 (1968). The person giving their consent has a right to withdraw their consent at anytime. As of this date, the defendant has not withdrawn his consent to his computer and disks being searched. Based on the consent doctrine, the forensic search did not violate the

Fourth Amendment of the United States Constitution, nor Article I, Section 14 of the Utah Constitution.

II. TIME FOR SERVICE OF A SEARCH WARRANT

Section 77-23-205(2) states a "search warrant shall be served within ten days from the date of issuance." The defendant argues that the warrant was executed on May 7, 2001. In addition, the defendant says it should have been served no later than May 4, 2001 and was void after that date. This argument raises two issues: when is a warrant "served" and how do you compute the time for serving a search warrant.

1. WHEN IS A WARRANT "SERVED?"

Typically a warrant is "served" when it is handed to the home owner as the officer explains their right to enter the home and search it or when the officers force entry into the home. Service is not as clear when the officers have the object to be searched in their possession. In the case at issue, the officers obtained a search warrant for the defendant's computer and disks which they already had in their possession. They considered the warrant "served" on themselves when they returned to the office because they were the individuals "in whose possession it was found." Section 77-23-206. The computer and disks were transported to the lab for analysis on May 7, 2001. Nothing in Section 77-23-205 requires the search itself to be completed within any certain time period. Forensic searches at the lab often take days and even months depending on the case load at the time the search is requested.

2. HOW DO YOU COMPUTE THE TIME FOR SERVING A SEARCH WARRANT?

If the court decides that the warrant was "served" on May 7, 2001, the date it was given to the lab, then the question is how do you compute the time for serving a search warrant Section 77-1-2 states "The procedure in criminal cases shall be as prescribed in this title, the Rules of Criminal Procedures, and such further rules as may be adopted by the Supreme Court of Utah " So, in addition to Section 77-23-205, the court must consider the Rules of Criminal Procedure because Rule 2 specifically sets out the procedure for computing periods of time. Cr P. Rule 2 says that if the time period is less than 11 days, Saturdays, Sundays, and legal holidays are not counted. Because the time set out in Section 77-23-205 is 10 days, Cr. P. Rule 2 requires Saturdays and Sundays to be excluded from the period. Using the dates argued by the defendant. April 24, 2001 to May 7, 2001, two Saturdays and two Sundays occur. When those days are subtracted from the time period, the warrant was served nine days after it was issued. Therefore, it was valid on the date it was served making the search a legally authorized search.

EXTENSION OF TIME

Cr. P. Rule 2 allows the court for cause shown, at any time in its discretion, including after the expiration of the specified period, to "permit the act to be done if there was a reasonable excuse for the failure to act." The State hereby moves the court to extend the time period for the search warrant to allow the search that was conducted in May 2001. The officers acted in good faith in administering this warrant. The evidence which was the basis for the probable

cause was not becoming stale The evidence was in a protected environment and was not going to change no matter how long it took for the search The defendant was not harmed or inconvenienced as a result of search If the officers violated the ten-day rule, it was a technical violation that did not violate the spirit of the law

CONCLUSION

The forensic search was conducted under consent and a duly authorized search warrant and all evidence obtained as a result of that search should be admitted at trial If there was a violation of the ten-day rule, it was not a substantial violation pursuant to Section 77-23-212 and therefore the motion to suppress should be denied.

DATED this 3rd day of September, 2002

MARK SHURTLEFF
Attorney General

Paula J Houston
Assistant Attorney General

CERTIFICATE OF SERVICE

I certify that I mailed, postage prepaid, and faxed a true and correct copy of the foregoing MEMORANDUM IN RESPONSE TO DEFENDANT'S 2nd MOTION TO SUPPRESS to:

SHELDON CARTER
HARRIS & CARTER
3325 N University Ave, STE 200
Provo, UT 84604

(801)377-1149 (Fax)

DATED this 3rd day of Sept, 2002.

Addendum D

IN THE FOURTH JUDICIAL DISTRICT COURT IN AND FOR UTAH COUNTY, STATE OF UTAH

STATE OF UTAH, Plaintiff, vs PAUL SORENSEN, Defendant.	**RULING Re: DEFENDANT'S MOTION TO SUPPRESS** Case No 011403460 Honorable Fred D Howard District Court Judge

The above-entitled matter having come before the court on Defendant's Motion to Suppress, and the court having reviewed the Motion and Plaintiff's Response thereto, the court being fully advised in the premises, and good cause appearing, it now makes the following ruling

RULING

The matter before the Court arises from Defendant's Motion to Suppress evidence On April 18, 2001, Detective Atack, an officer with the Salt Lake City Police Department assigned to the Internet Crimes Against Children Task Force (ICAC), with other members of ICAC, contacted Defendant at his home. Detective Atack explained to Defendant that ICAC had received information that Defendant had purchased access to child pornography on the Internet After this initial contact with him, Defendant was asked if the detectives might look at his

computer regarding evidence of child pornography Defendant consented to the request and led the investigators to the bedroom where the computer was located The detectives searched then seized the computer

On July 19, 2002, Defendant filed his Motion to Suppress Plaintiff filed it's Response on August 16, 2002 Defendant asserts that Detective Atack and other officers unreasonably searched and seized his computer for evidence of child pornography, and, therefore, the evidence should be suppressed Plaintiff asserts that the detectives advised Defendant of the information they had received regarding possible child pornography, and that they asked for and received permission to look at his computer, and as such, the search was a consensual search that does not violate the Fourth Amendment of the United States Constitution The Court is persuaded by Plaintiff's pleading and authorities regarding consensual searches and that such a search is valid if the consent was freely and voluntarily given After review of the parties' pleadings and authorities the Court concludes that Defendant freely and voluntarily gave his permission for the officers to search his computer Further, no evidence has been established of record to show that Defendant later withdrew his consent to render a continued search invalid

Defendant also asserts that seizure of the computer was invalid because the search of the computer was done illegally Having determined that the search conducted by the detectives on Defendant's computer was reasonable and valid, the officers' subsequent seizure of the computer was legal when they thereafter were able to view images which ostensibly would be characterized

as child pornography. The seizure was also justified since the Defendant might destroy or conceal the computer data evidence on the computer while the officers sought a search warrant.

Finally, Plaintiff asserts that the search warrant obtained on April 24, 2001, was properly served on the possessors of the property to be searched. U.C.A. § 77-23-205(2) regarding search warrant service states, "a search warrant shall be served within ten days from the date of issuance." Defendant asserts that the warrant was executed on May 7, 2001, however, it should have been served no later than May 4, 2001, or it became void. The Court is not persuaded by Defendant's argument. The Court notes that service and execution of the warrant are separate issues that are often mistaken as one in the same because usually the warrant is served and executed simultaneously. The officers seized the computer on April 18, 2001, taking it into their custody but the warrant was not obtained by the officers until April 24, 2001. The warrant was essentially served on May 24, 2001 at the time the officers obtained the warrant because the property covered by the warrant was in their possession. Therefore, the warrant was served on April 24, 2001 and not executed until May 7, 2001 when the computer and disks were delivered to the forensic lab for search. After review of the statutory authorities the Court finds that there is no requirement in U.C.A. § 77-23-205 that requires the authorities who are executing the search upon the property to conduct such search within a specific time period. The Court concludes that the subsequent forensic search conducted upon the computer following it's seizure was a valid search authorized by warrant obtained on April 24, 2001.

For the foregoing reasons, the Court respectfully denies Defendant's Motion to Suppress

DATED this 4 day of September, 2002

BY THE COURT

Honorable Fred D Howard
District Court Judge

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was mailed to the following, postage prepaid, on this 4 day of September 2002.

Sheldon R. Carter
HARRIS & CARTER
3325 N University Ave., Suite 200
Jamestown Square, Clocktower Building
Provo, Utah 84604

Craig Barlow
Paula Houston
Jason Perry
Assistant Attorneys General
Mark Shurtleff
Attorney General
236 State Capitol
Salt Lake City, Utah 84114

By _____
Deputy Clerk

Addendum E

SHELDEN R. CARTER (0589)
HARRIS & CARTER
Attorney for Defendant
3325 North University Avenue
Suite 200
Provo, Utah 84604-4438
Telephone: 375-9801

FOURTH JUDICIAL DISTRICT COURT, STATE OF UTAH
UTAH COUNTY, PROV0 DEPT.

---ooOoo---

STATE OF UTAH, Plaintiff, vs. **PAUL SORENSON,** Defendant.	**OBJECTION TO FINDING OF FACT REFERENCING SEARCH BY CONSENT** Case No: **011403460 fs** Honorable: Howard

---ooOoo---

Defendant objects to any findings suggesting the State had the defendant's consent to search his computer or property. The facts in support of the motion to suppress were contained within the "Stipulated Facts referencing Motion to Suppress."

No facts were presented to the Court regarding the issue of consent. See attachment detailing all the facts relevant to the Motion to Suppress.

DATED this 17TH day of March, 2003.

SHELDEN R CARTER
ATTORNEY FOR DEFENDANT

MAILING CERTIFICATE

I HEREBY CERTIFY that I personally mailed a true and correct copy of the foregoing on this ' day of March, 2003, by first-class, U.S. Mail, postage prepaid to the following:

Paula Houston
Attorney General for the State of Utah
236 State Capital
Salt Lake City, Utah 84126-0295

_____
Secretary

SHELDEN R CARTER (0589)
HARRIS & CARTER
Attorney for Defendant
3325 N. University Ave., Ste. 200
Jamestown Square, Clocktower Bldg.
Provo, Utah 84604

Telephone: 375-9801

IN THE FOURTH JUDICIAL DISTRICT COURT FOR UTAH
UTAH COUNTY
--oooOooo--

STATE OF UTAH,	)	
	)	**Stipulated Facts Referencing**
	)	**Motion to Suppress**
vs.	)	
	)	
	)	
PAUL SORENSON,	)	
	)	Crim. No. **011403460**
Defendant.	)	

--oooOooo--

On April 18, 2001, officers went to the home of the defendant. Officers approached the defendant at his home. Officers advised asked to look at a computer at the defendant's home. The officers then look at the computer via a program call 'pre-search' the officers searched the computer locating what they believed to be 40 images of child pornography. They then terminated their search and seized the computer.

The officers then applied for a search warrant by filing an affidavit in support of the warrant. See attachment. The affidavit was signed on April 24, 2001. Based on said affidavit, Judge Eyre of the Fourth District Court signed the search warrant on April 24, 2001. See Search Warrant.

On May 7, 2001, the officers executed the search warrant. On said date, the Forensic Computer Lab received the computer and two floppy disks from the officer. A bit stream image backup was made of the original hard drive. The backup was then transferred to recordable CDs and marked as the original backup. The backup was used to create additional bit stream image copies that were used in the forensic examination. This same process was used on the floppy disks.

Dated this ___ day of August, 2002.

_____
Paula Houston
For the Attorney General for the State of Utah

Dated this ___ day of August, 2002.

_____
Shelden Carter
Attorney for the Defendant Sorenson

MAILING CERTIFICATE

I HEREBY CERTIFY that I personally faxed a true and correct copy of the foregoing on this _____ day of August, 2002, by first-class, U.S. Mail, postage prepaid to the following:

Hand delivered this day to the Attorney General

Fourth Judicial District Court
District Court
Provo, Utah

_____
Secretary

IN THE FOURTH DISTRICT COURT

UTAH COUNTY, STATE OF UTAH

SEARCH WARRANT

No. _____

To any peace officer in the State of Utah:

Proof by Affidavit under oath having been made this day before me by Detective Ryan Atack, I am satisfied that there is probable cause to believe that on the premises known as:

Internet Crimes Against Children Task Force Office, 257 East 200 South, Salt Lake City, UT, 84111.

In the City of Salt Lake, County of Salt Lake, State of Utah, there is now certain property or evidence described as:

> **A personal computer**, known as a Packard Bell Legend 2440, serial number N160095844+.
>
> **Two floppy disks,** known as Diane's 1.2MB and Diane's 720KB.

And that said property, which was seized by the Internet Crimes Against Children Task Force, was unlawfully acquired or is unlawfully possessed; or has been used to commit or conceal a public offense; or is being possessed with the purpose to use it as a means of committing or concealing a public offense and consists of an item or constitutes evidence of illegal conduct possessed by a party to the illegal conduct.

You are therefore commanded in the daytime, to make a search of the above described items for the herein-above described property or evidence and if you find the same or

any part thereof, to bring it before me at the Fourth District Court, County of Utah, State of Utah, or retain such property in your custody, subject to the order of this court.

GIVEN UNDER MY HAND and dated this 24th day of April, 2001.

Judge
Fourth District Court

IN THE FOURTH DISTRICT COURT

UTAH COUNTY, STATE OF UTAH

STATE OF UTAH)
:
COUNTY OF UTAH)

AFFIDAVIT FOR SEARCH WARRANT

I, Detective Ryan Atack, under oath state:

1. I am a Detective with the Salt Lake City police department. I have been a police officer for 9 years and am currently assigned to the Utah Internet Crimes Against Children Task Force. My current assignment is that of investigating the sexual exploitation of children by means of the Internet. I have attended the Fox Valley Technical College protecting children on-line course. I have also attended the Western States Vice Conference, the National Consortium for Justice Information and Statistics On-line Investigation course, and the Federal Bureau of Investigation Innocent Images course. I have investigated several cases involving the sexual exploitation of children over the Internet.

2 This affidavit is made in support of an application for a warrant to search a computer which I have seized from Paul Sorensen. The computer is a Packard Bell Legend 2440, serial number N160095844+. I seized the computer on April 18, 2001 and it is being stored at the Utah Internet Crimes against Children Task Force Office located at 257 East 200 South, Salt Lake City, Utah 84111. This affidavit has been reviewed by Jason P. Perry, Assistant Utah Attorney General.

3. In January of 2000, I received information from the Dallas Texas Police Department that Paul Sorensen of 234 South 800 West, Orem, UT 84058, had purchased access to a web site that distributed child pornography with one of his credit cards.

4. On April 18, 2001, myself and other members of the Utah Internet Crimes Against Children Task Force contacted Paul Sorensen at his residence. We identified ourselves to Mr. Sorensen and explained to him that we had received information that he had purchased access to child pornography on the Internet. I informed him that he was not under arrest. I asked Mr. Sorensen if we could look at his computer to see if he had any child

pornography stored on it Mr Sorensen said "sure, no problem" and led us to the computer Using a program called "Pre-search" we conducted a consent search of Mr Sorensen's computer During the search I saw approximately 40 images of naked children that I believed to be under the age of 12 in various poses exposing their genitalia and engaged in sexual activity After viewing these images I terminated the consent search of Mr Sorensen's computer During this consent search, Mr Sorensen stated that the pictures we viewed on his computer " seem familiar to ones he's seen over the years" I seized the computer so that a full forensic examination of it could be preformed

6 On the basis of the information contained in this affidavit, I believe there is probable cause to believe that Paul Sorensen may be a collector of child pornography and that there will be additional evidence of this crime stored on his computer that was seized Accordingly, it is requested that following items be searched which are located at 257 East 200 South, Salt Lake City, UT 84111

A personal computer known as a Packard Bell Legend 2440, serial number N160095844+

Two Floppy disks know as Diane's 1 2 MB and Diane's 720 KB

By- Atack

Detective Ryan Atack
Utah Internet Crimes Against Children Task Force

Subscribed and sworn to before me this 24th day of April, 2001

Judge
Fourth District Court

0000006

SHELDEN R CARTER (0589)
HARRIS & CARTER
Attorney for Defendant
3325 North University, Suite 200
Provo, Utah 84604-4438
Telephone: 375-9801

IN THE FOURTH JUDICAL DISTRICT COURT
STATE OF UTAH, UTAH COUNTY
---ooOoo---

	)	**MOTION TO STRIKE**
STATE OF UTAH,	)	COURT FINDINGS
	)	NOT SUBSTANTIATED
Plaintiff,	)	BY STIPULATION RE:
vs.	)	FACTS
	)	
	)	CASE NO. 011403460
PAUL HARVEY SORENSEN,	)	
Defendant.	)	DIVISION# 4 2
	)	

---ooOoo---

Defendant herein sought to suppress evidence. Defendant asserts that officers herein took, confiscated and search his property. The defendant asserts that such conduct is a violation of the rights guaranteed to him under Art. I Section 14 of the Utah State Constitution and the Fourth Amendment to the United States Constitution.

The parties herein stipulated to the facts upon which the Court would rely on the motion to suppress. The stipulation was signed by counsel for both parties and approved by this Court.

The Court's ruling went beyond the facts represented in the stipulation. The only factual basis for the Court' ruling (re: motion to suppress) would be within the

parties' stipulation. No other hearings were conducted regarding the motion to suppress and no other evidence exists..

Based thereon, the defendant motions to limit the factual findings (set out in the Court's ruling denying the motion to suppress) to those facts contained within the parties' stipulation.

Dated this 2nd day of April, 2003.

Shelden Carter
Attorney for Defendant Sorensen

MAILING CERTIFICATE

I hereby certify that I hand delivered a copy of the foregoing to:

ATTORNEY GENERAL FOR THE STATE OF UTAH
236 State Capitol
SALT LAKE CITY, UTAH 84111

Postage prepaid this 2 day of April 2003.

Secretary

Addendum F

IN THE FOURTH JUDICIAL DISTRICT COURT
UTAH COUNTY, STATE OF UTAH

STATE OF UTAH, Plaintiff, vs. PAUL HARVEY SORENSEN, Defendant.	**RULING RE: DEFENDANT'S MOTION TO STRIKE COURT FINDINGS NOT SUBSTANTIATED BY STIPULATION RE: FACTS** Case # 011403460 Judge Fred D. Howard Division 2

The above-entitled matter having come before the Court on Defendant's Motion to Strike Court Findings Not Substantiated by Stipulation Re: Facts; and the Court having considered the Motion and Plaintiff's Response thereto; the Court being fully advised in the premises, and good cause appearing, it now makes the following ruling:

RULING

The matter before the Court arises from Defendant's Motion to Suppress evidence and the Court's previous ruling on the Motion. The Court notes that the parties' Stipulated Facts Referencing the Motion to Suppress contains the following language:

> "On April 18, 2001, officers went to the home of the defendant. Officers approached the defendant at this home. Officers advised asked to look at a computer at the defendant's home. The officers then look at the computer via a program call 'pre-search' the officers searched the computer locating what they believed to be 40 images of child pornography. They then terminated their search and seized the computer.

> "The officers then applied for a search warrant by filing **an affidavit in support of the warrant. See attachment.** The affidavit was signed on April 24, 2001. Based on said affidavit, Judge Eyre of the Fourth District Court signed **the search warrant on April 24, 2001. See Search Warrant.**
>
> "On May 7, 2001, the officers executed the search warrant. On said date, the Forensic Computer Lab received the computer and two floppy disks from the officer. A bit stream image backup was made of the original hard drive. The backup was then transferred to recordable CDs and marked as the original backup. The backup was used to create additional bit stream image copies that were used in the forensic examination. This same process was used on the floppy disks." (Emphasis added)

By use of the above language, as drafted by Defendant's counsel, the parties "incorporated" the facts also contained within the attachments as well: i.e., the Search Warrant and the Affidavit for Search Warrant, as opposed to the mere reference to the fact that a search warrant was issued which required no such document reference or incorporation. Notably, the Affidavit for Search Warrant contains the following language:

> "On April 18, 2001, myself and other members of the Utah Internet Crimes Against Children Task Force contacted Paul Sorensen at his residence. We identified ourselves to Mr. Sorensen and explained to him that we had received information that he had purchased access to child pornography on the Internet. I informed him that he was not under arrest. **I asked Mr. Sorensen if we could look at his computer to see if he had any child pornography stored on it. Mr. Sorensen said 'sure, no problem' and led us to the computer.** Using a program called 'Pre-search' we conducted a consent search

> of Mr Sorensen's computer During the search I saw approximately 40 images of naked children that I believed to be under the age of 12 in various poses exposing their genitalia and engaged in sexual activity After viewing theses images I terminated the consent search of Mr Sorensen's computer During this consent search, Mr Sorensen stated that the pictures we viewed on his computer 'seemed familiar to ones he's seen over the years ' I seized the computer so that a full forensic examination of it could be preformed " (Emphasis added)

These are the facts known and claimed by the parties at the time the stipulation was made relative to the Motion to Suppress It is the Court's opinion as set forth in its previous Ruling that notwithstanding Defendant's assertions to the contrary, such factual occurrence and the circumstances of this case support the conclusion that the search was a consensual search For these reasons and by reason of the authorities and arguments set forth in Plaintiff's memoranda, Defendant s Motion is respectfully denied

Dated this 29th day of April 2003

JUDGE FREDD HOWARD
District Court Judge

CERTIFICATE OF DELIVERY

I certify that true copies of the foregoing Ruling were delivered on the 1st day of ~~April~~ May 2003 to the following in the manner indicated, to wit:

Paul G. Amann
Craig L. Barlow
Assistant Attorneys General
by hand

Shelden R. Carter
Attorney for Defendant
by hand

Deputy Court Clerk